

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Richard Lowery, on behalf of himself
and others similarly situated,

Plaintiff,

v.

Texas A&M University System, et al.,
Defendants.

CIVIL ACTION NO.
4:22-cv-3091

JUDGE CHARLES ESKRIDGE

PLAINTIFF'S ADDITIONAL NOTICE TO THE COURT

Last week, Mark A. Welsh III became Acting President of Texas A&M University upon the resignation of former president Katherine Banks. Welsh has also replaced Banks as a named defendant in this litigation. *See* Fed. R. Civ. P. 25(d).

On July 26, 2023, Acting President Welsh e-mailed the Texas A&M community and offered a ringing endorsement of the university's diversity-related practices:

Texas A&M has been in the news lately, and not for the reasons we would like. But recent events and the accompanying commentary do not define us as an institution, nor do they undo the great work we see across this university every day. They should, however, remind us that living up to our core values is an ongoing commitment, as even esteemed institutions like ours must consistently confront and resolve challenges to uphold our status as a great university. Just to be clear on where I stand, I believe diversity in all its forms is a strength.

Exhibit 1. Welsh's e-mail does not acknowledge SB 17 or *Students for Fair Admissions*, and it does not even indicate an awareness that using race or sex preferences to promote diversity is illegal under state and federal law. Instead, it implies that diversity is

a “core value” of the university, and offers not even the slightest suggestion that university intends to change its ways in response to SB 17 or *Students for Fair Admissions*.

The burden is on the defendants to show that Mr. Lowery’s claims for prospective relief are moot,¹ and the defendants have yet to produce any evidence showing how they will respond to the enactment of SB 17 and the ruling in *Students for Fair Admissions*. The Court cannot assume that the defendants will halt the use of race and sex preferences in the absence of evidence showing their intent to do so. Yesterday’s e-mail from Acting President Welsh should not inspire confidence that the new regime has any intention of rooting out the discriminatory hiring practices that have become entrenched at Texas A&M University.

CONCLUSION

The motion to dismiss for lack of justiciability should be denied.

Respectfully submitted.

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Dated: July 27, 2023

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1. See *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 190 (2000); *Franciscan Alliance, Inc. v. Becerra*, 47 F.4th 368, 376 (5th Cir. 2022).

CERTIFICATE OF SERVICE

I certify that on July 27, 2023, I served this document through CM/ECF upon:

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